

Nadler Examines U.S. Supreme Court's Recent Decision in Ashcroft v. Iqbal

Tuesday, 27 October 2009

WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing entitled “Access to Justice Denied: An Oversight Hearing on Ashcroft v. Iqbal.” The hearing explored the Supreme Court’s May 18th decision in Ashcroft v. Iqbal to dismiss the case, and the dramatic impact that decision has had on civil rights and civil litigation. Some have described that ruling as the Court’s most consequential decision of the last term, reflecting a remarkable departure from long established pleading standards. With a new, more stringent standard now in place, over 2,000 federal civil actions have cited Iqbal and were, likely as a result, thrown out, effectively denying those claimants access to justice in the federal courts.

“The profound implications of the Iqbal case are only now becoming clear, and the fallout is deeply disturbing,” said Nadler. “In this dangerous precedent, the Supreme Court has dismissed an entire case, not on the merits, or on the law, but on the bald assertion that the claim was not ‘plausible.’ This only furthers the implementation of this conservative Court’s agenda to deny access to the courts to people victimized by corporate or government misconduct. This is judicial activism at its worst, and I plan to introduce legislation, along with Rep. Johnson and Chairman Conyers, to correct this misreading of the rules and restore the pleading standard followed for the last 50 years. Rights without remedies are no rights at all.”

The plaintiff in Ashcroft v. Iqbal is Javaid Iqbal, a Pakistani Muslim who was arrested on criminal immigration charges following the September 11, 2001 terrorist attacks and detained in a maximum security prison in New York. Iqbal alleges that, while in custody, he experienced extreme mental and physical cruelty, strip and cavity searches, and was denied the opportunity to pray. After several months of detention, Iqbal and 183 other persons of “high interest” in the facility were never prosecuted on terrorism charges or connected to September 11th; rather, many, like Iqbal, plead guilty to immigration offenses, served a prison term, and were deported.

The specific allegations that the U.S. Supreme Court was asked to consider in Iqbal were those that Iqbal made against former Attorney General John Ashcroft and Federal Bureau of Investigation (FBI) Director Robert Mueller. Iqbal asserts that Ashcroft devised a policy – with Mueller responsible for its execution – that was meant to confine and abuse him solely on account of his religion and national origin in violation of the First and Fifth Amendments. While both the Eastern District of New York and the Second Circuit Court of Appeals found that Iqbal had a sufficient claim to bring a case against the U.S. government, the Supreme Court disagreed.

Nadler will introduce legislation, along with Judiciary Subcommittee on Courts and Competition Policy Chairman Hank Johnson (D-GA) and Judiciary Chairman John Conyers (D-MI), to restore previously observed pleading standards.

Expert witnesses at the hearing were: Arthur Miller, Professor at the New York University School of Law; John Vail, Vice President and Senior Counsel at the Center for Constitutional Litigation; Debo Adegbile, Director of Litigation at the NAACP Legal Defense and Educational Fund; and, Gregory Katsas, former Assistant Attorney

General, Civil Division,
U.S. Department of Justice.

Below is the text of Nadler's opening statement:

"Today's hearing looks at the implications of the Supreme Court's recent ruling in the case of *Ashcroft v. Iqbal* and its predecessor, *Bell Atlantic Corp. v. Twombly*. Although the case dealt with the liability of federal officials for the post-September 11 round up of the 'usual suspects,' the *Iqbal* decision has had a far reaching effect on the rights of litigants in a broad range of cases. Its implications are only now becoming clear, and the fallout is deeply disturbing.

"Javid Iqbal is a Pakistani national who was picked up in the wake of the September 11 attacks. He was deemed to be an individual of 'high interest' with regard to the investigation of the attacks and placed in the special housing unit in the Federal Detention Center in Brooklyn, New York, which happens to be in my district.

"He subsequently alleged that he was beaten and denied medical care, and that his designation and mistreatment was the result of an unconstitutional determination based on his religion, race, or national origin.

"The distinguished ranking member, the Gentleman from Wisconsin, who was the Chairman of the full committee at the time, visited the Brooklyn facility at the time as part of his oversight function. I joined him in that visit. The allegations were serious then, and, with all that we now know, even more disturbing now.

"When the Supreme Court considered Mr. Iqbal's claim, however, it did something truly extraordinary. Rather than questioning, as required under Rule 8(a)(2) of the Rules of Civil Procedure, whether the plaintiff had included a 'short and plain statement of the claim showing that the pleader is entitled to relief,' it dismissed the case, not on the merits, or on the law, but on the bald assertion that the claim was not 'plausible.'

"In the past, the rule had been, as the Supreme Court stated in *Conley v. Gibson*, that the pleading rules exist to 'give the defendant fair notice of what the claim is and the grounds upon which it rests' assuming provable facts. Now the Court has required that, prior to discovery, courts must somehow assess the 'plausibility' of the claim.

"This rule will reward any defendant who succeeds in concealing evidence of wrongdoing, whether it is government officials who violate people's rights, polluters who poison the drinking water, or employers who engage in blatant discrimination. Often evidence of wrongdoing is in the hands of the defendants, and the facts necessary to prove a

valid claim can only be ascertained through discovery.

“The Iqbal decision will effectively slam shut the courthouse door on legitimate plaintiffs based on the judge’s take on the plausibility of a claim, rather than on the actual evidence.

“This is another wholly invented new rule, overturning 50 years of precedent, designed to close the courthouse doors. This combines with tightened standing rules, and cramped readings of existing remedies, to implement this conservative Court’s agenda to deny access to the courts to people victimized by corporate or government misconduct. This is judicial activism at its worst — judicial usurpation of the procedures set forth for amendment the Federal Rules of Civil Procedure.

“I plan to introduce legislation, with the distinguished Gentleman from Georgia, Mr. Johnson, and the distinguished Chairman of the Full Committee, to correct this misreading of the rules, and restore the standard followed for the last 50 years since the Supreme Court’s decision in Conley.

“Rights without remedies are no rights at all. Americans must have access to the courts to vindicate their rights.

“I look forward to the testimony of our distinguished panel of witnesses, and I yield back the balance of my time.”